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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,197	04/20/2007	Kazuhiko Minami	292943US40PCT	9138
22850 7590 12/04/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER CIGNA, JACOB JAMES				
ART UNIT		PAPER NUMBER		
4176				
NOTIFICATION DATE		DELIVERY MODE		
12/04/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/584,197

Applicant(s)

MINAMI ET AL.

Examiner

JACOB J. CIGNA

Art Unit

4176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) _____ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-17, drawn to a method for manufacturing a heat exchanger.

Group II, claim 18, drawn to a heat exchanger.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The following method is common to both groups: The method of manufacturing a heat exchanger comprising the steps of forming a thermally spraying an Al-Si series alloy brazing material layer on a surface of an aluminum core; applying non-corrosive flux showing zinc substitution reaction onto the surface of the aluminum tube; combining the tube with a fin; and brazing the tube and the fin in a combined state. However, the method common to both groups is known in the art, as taught by Kanai et al. (US Patent No. 6,200,642 B1 hereinafter known as KANAI). KANAI teaches a method of producing brazeable aluminum material such that "A brazing metal present in a thermally sprayed layer on the aluminum core serves as a brazing agent. Typical examples of the brazing

metal are Al-Si alloys" (Column 2 lines 57-59). The aluminum core can be of any shape, including a tube, as taught by Column 2 lines 50-56, "An aluminum article used as a core material in the present invention is not restricted to those which are of a specific composition, but may be of any composition depending on its final use." KANAI further teaches an example of creating heat exchanging tubes (Column 8 lines 15-16). KANAI teaches the next technical feature, applying flux with Zinc, in the following: "Zn or its alloy improves the corrosion resistance of the aluminum material which will have undergone any brazing process to be adjoined to any material else" (Column 3 lines 4-6). Further, "the flux which may be added to the mixture of the first and second powders may be of any suitable kinds" (Column 4 lines 1-2). The Zn is made into a powder and combined with the flux and the Al-Si powder to be thermally sprayed onto the surface of the tube. KANAI teaches combining the tube with a fin and brazing them to a combined state: "The corrosion-resistant and brazeable aluminum material prepared in the described manner will be used as one part which is to be brazed to the other part to manufacture an aluminum product...As the temperature raises, the brazing metal will melt to braze the parts mentioned above one to another" (Column 6 lines 33-36, 46-48). KANAI specifically teaches a tube and a fin in figure 5 where item 71 is a tube, and item 72 is a fin (Column 8 lines 15-25). Therefore, as shown, there is lack of unity a posteriori, since the technical features of the method are not applicant's contribution over the prior art.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

4. Examiner has found that claims 10-18 are in an improper multiple dependent form. For each claim 10-18, Examiner has assumed that the claim is dependent upon the broadest claim listed as being dependent upon. In this case, each claim has been assumed to be dependent upon claim 1.

The species are as follows:

Species 1: Claims 1, 10-17. A method of manufacturing a heat exchanger.

Species 2: Claims 2-3, 9. The flux of genus claim 1 contains a binder, the binder being resin.

Species 3: Claims 4-5, 9. The flux of genus claim 1 contains a binder, the binder being polyethylene oxide.

Species 4: Claims 6-8, 9. The flux of genus claim 1 contains a binder, the binder being paraffin.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claim 1 is generic to species 2-4.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Genus claim 1 has been found to be known in the prior art. See discussion of lack of unity between Groups I-II above.

6. A telephone call was made to Attorney Nancy Connell on 25 November 2009 at 3:00pm EST to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result**

in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACOB J. CIGNA whose telephone number is (571) 270-5262. The examiner can normally be reached on Monday - Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on 571-272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JACOB J CIGNA/
Examiner, Art Unit 4176
November 25, 2009

/Marvin M. Lateef/
Supervisory Patent Examiner, Art Unit 4176